

ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
SARAH J. HEFFLEY, JUDGE

DIVISION IV

CACR 06-926

June 27, 2007

APPEAL FROM THE CIRCUIT
COURT OF CRITTENDEN
COUNTY, [NO. CR-2005-321]

TABITHA OLIVER

APPELLANT

HONORABLE CHARLES DAVID
BURNETT, JUDGE

V.

STATE OF ARKANSAS

APPELLEE

SUPPLEMENTATION OF THE
RECORD ORDERED; REBRIEFING
ORDERED; MOTION TO BE
RELIEVED DENIED

A jury in Crittenden County found appellant Tabitha Oliver guilty of first-degree battery. She was then sentenced to a term of five years' imprisonment. Pursuant to *Anders v. California*, 386 U.S. 738 (1967), and Rule 4-3(j) of the Rules of the Arkansas Supreme Court and Court of Appeals, appellant's attorney has filed a motion to withdraw as counsel on the ground that the appeal is wholly without merit. The motion is accompanied by an abstract, brief, and addendum purporting to list all adverse rulings and to explain why each adverse ruling is not a meritorious ground for reversal. The appellant was provided a copy of counsel's brief and notified of her right to file a list of points within thirty days. Appellant has chosen not to do so.

It is imperative that counsel follow the appropriate procedure when filing a motion to

withdraw as counsel. *Brown v. State*, 85 Ark. App. 382, 155 S.W.2d 22 (2004). Likewise, we are bound to perform a full examination of the proceedings as a whole to decide if an appeal would be wholly frivolous. *Campbell v. State*, 74 Ark. App. 277, 47 S.W.3d 915 (2001). This framework is our method of ensuring that indigents are afforded their constitutional rights. *Id.* If counsel fails to address all possible grounds for reversal, we can deny the motion to withdraw and order rebriefing. *Sweeney v. State*, 69 Ark. App. 7, 9 S.W.3d 529 (2000).

In her notice of appeal, appellant designated for inclusion “the entire transcript of the trial record in this cause, including but not limited to voir dire, opening and closing statements of counsel, and all proceedings conducted regarding any matters involved with this case.” Nevertheless, the court reporter failed to transcribe voir dire, opening and closing statements of counsel at trial, and the statements of counsel made during the sentencing phase of trial. Unless we are provided with a complete record on appeal, we are not able to determine whether there has been compliance with *Anders* and Rule 4-3(j). See *Campbell v. State, supra*. Consequently, we direct appellant’s counsel to supplement the record to include those portions of the record that have been omitted.

We note that counsel’s brief and abstract are also deficient. The record reflects that appellant moved for directed verdicts as required under Ark. R. Crim. P. 33.1. The substance of those motions has not been abstracted, and counsel has also failed to discuss the sufficiency of the evidence in his brief. Appellant’s abstract is woefully inadequate in one other respect. Only fleeting excerpts of the testimony are given, and whole portions of the testimony have been omitted. In its present form, we learn nothing about the facts of this case. Thus we direct counsel to file a substituted brief and abstract.

In sum, we deny counsel's motion to be relieved at this time. We direct counsel to file a supplemental record in thirty days. Counsel is to submit a substituted brief fifteen days after the supplemental record is filed that contains an adequate abstract and a discussion of the denial of his motions for a directed verdict.

Supplementation of the record and rebriefing ordered.

PITTMAN, C.J., and ROBBINS, J., agree.